IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.12.2007

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

WP.NO.2431/2007 AND M.P.No.1/2007

M/s.Abdul Azeez Sons & Company
represented by its Managing partner,
Mr.K.Iqbal Ahmed,
Vellore-632 004. .. Petitioner

Vs

1.Indian Bank
represented by its Authorised Officer,
TKM Complex, Katpadi Road,
Vellore 632 004.

2.The Branch Manager,
Indian Banck, Vellore Main Road,
Katpadi Road,
Vellore 632 004. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified Mandamus, calling for the records on the file of the First respondent relating to the impugned notice dated 16.12.2006 bearing Ref.No.Nil and quash the same and consequently forbear the respondents from initiating further action under SARFAESI Act.

For Petitioner : Mr.D.Bharatha Chakravarthy
for M/s.Sai Bharath & Ilan
For Respondents: Mr.V.Kalyanaraman for
M/s.Aiyar and Dolia

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ORDER

Contending that the first respondent has issued a fresh notice under section 13[2] of the SARFAESI Act, when proceedings are pending before the Debts Recovery Tribunal in respect of the earlier notice under section 13[2], the petitioner has come up with the present writ petition.

2.Heard Mr.Bharatha Chakravarthy, learned counsel for the petitioner and Mr.Kalyanaraman, learned counsel for the respondents.

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3.Admittedly, a notice under section 13[2] was issued on 21.10.2002 and a possession notice was also issued under section 13[4] on 01.07.2004. As against the said possession notice, the petitioner has already approached the Debts Recovery Tribunal by way of an appeal under section 17 of the SARFAESI Act. A conditional order of stay is stated to have been passed in the said appeal and the petitioner claims to have complied with the conditional order. The appeal is pending consideration still before the Debts Recovery Tribunal.

4.At this stage, the first respondent has issued a second notice under section 13[2]. Therefore, the petitioner has come up with the present writ petition challenging the notice under section 13[2] on the short ground that the first respondent is not entitled to keep on issuing notices under section 13[2] repeatedly, especially when the previous notice under section 13[2] and the possession notice under section 13[4] are under challenge in a regularly filed appeal before the Debts Recovery Tribunal.

5.I have carefully considered the submissions of the learned counsel for the petitioner.

6.The first notice under section 13[2] issued on 21.10.2002, contained two schedules, with Schedule-1 containing the description of 8 items of immovable properties and Schedule-2 containing the list of hypothecated movable properties. When possession notice under section 13[4] was issued on 01.07.2004, the said possession notice contained only the description of four immovable properties leaving out the remaining four out the total of 8 items of immovable properties covered by the notice under section 13[2]. As against possession notice dated 01.07.2004, covering only four properties, the petitioner has already gone before the Debts Recovery Tribunal and obtained a conditional order not to proceed with the auction sale of those properties, in S.A.No.20/2004 dated 13.12.2004 [later re-numbered as S.A.No.15/2007 on the file of the Debts Recovery Tribunal-III, Chennai].

7.When the appeal is still pending consideration before the Debts Recovery Tribunal, the first respondent has issued the notice impugned in the writ petition under section 13[2], dated 16.12.2006 in respect of the remaining four properties which were left out under the possession notice dated 01.07.2004.

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8.Mr.D.Bharatha Chakravarthy, learned counsel for the petitioner contended that section 13[2] of the SARFAESI Act speaks only about 'notice' and not about 'notices' and that therefore, it is not open to the first respondent to keep on issuing notices under section 13[2] in a piecemeal manner. Section 13[2] reads as follows:-

> "13[2]:Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is

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> classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section [4]."

9.According to the learned counsel for the petitioner, when the plain language used in the section refers only to "notice in writing", there is no scope for enlarging the same to mean "notices in writing".

10.However, I am unable to countenance the said contention of the learned counsel for the petitioner for the simple reason that under section 13[2] of the General Clauses Act, 1897, the words in the Singular would include the plural and vice-cersa in all Central Acts and Regulations. Section 13 of the General Clauses Act reads as follows:-

> "13.GENDER AND NUMBER:-In all [Central Acts] and Regulations, unless there is anything repugnant in the subject or context,-
>
> [1]words importing the masculine gender shall be taken to include females; and
>
> [2]words in the singular shall include the plural and vice versa."

11.Therefore, unless there is anything repugnant in the subject or context, words in singular would always include plural. I do not find anything repugnant either in section 13 or in any other section of SARFAESI Act to exclude the plural, when section 13[2] refers to "notice". Therefore, there is no embargo for the first respondent to issue a fresh notice under section 13[2], in respect of properties, which were not covered by the earlier possession notice under section 13 [4] dated 01.07.2004.

12.Learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in NEWSPAPERS LIMITED V. STATE INDUSTRIAL TRIBUNAL reported in AIR 1957 SC 532, for the preposition that the provisions of the General Clauses Act, cannot always be imported into provisions of all the Acts. But, the said decision is of no assistance to the petitioner for the simple reason that, that decision arose out of the U.P.Industrial Disputes Act,1947. Under the said Act, unless a group of workmen joined together and raised a dispute, it would not come within the definition of the term "industrial dispute". At the time when the aforesaid decision was rendered, the U.P.Industrial Disputes Act had no provision to enable individual workman to raise an industrial dispute. Hence, the word "workmen", indicating the plural, was held not to include the singular, since such an interpretation on the basis of section 13[2] of the General Clauses Act was beyond the object and scope of U.P.I.D. Act, 1947 at that point of time. In other words there was

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something repugnant to the context in the U.P. Industrial Disputes Act, 1947, for invoking the provisions of section 13[2] of the General Clauses Act.

13.But, insofar as the SARFAESI Act is concerned, the scope of the Act, does not prohibit the issue of any number of notices under section 13[2]. Therefore, the application of the provisions of section 13[2] of the General Clauses Act to the word "notice" found in section 13[2] of the SARFAESI Act, is justified.

14.Moreover, the original notice issued under section 13[2] dated 21.10.2002, covered eight items of immovable properties. The possession notice issued under section 13[4] on 01.07.2004 covered only four out of eight items of properties. There is no embargo under any of the sub-sections of section 13 of the SARFAESI Act for the first respondent even now to merely issue a possession notice under section 13[4], in respect of the four items of properties not covered by the earlier notice under section 13[4] dated 01.07.2004. If there can be no embargo for the issue of a fresh possession notice, under section 13[4] in respect of the left out properties, there cannot be any embargo for the issue of a fresh notice under section 13[2]. Therefore, even on this ground the contention of the learned counsel for the petitioner cannot be accepted.

15.In any event, a writ petition as against a notice under section 13[2] is not maintainable. It is always open to the petitioner to give a reply and it is only when the first respondent issues a possession notice under section 13[4] that the petitioner is entitled to approach the Debts Recovery Tribunal under section 17. In this case, the petitioner has already filed an appeal in S.A.No.15 of 2007 on the file of the Debts Recovery Tribunal-III, Chennai. Therefore, if and when a possession notice is issued under section 13[4], in pursuance of the notice impugned in ths writ petition, it is always open to the petitioner either to seek relief in the appeal already pending before the Debts Recovery Tribunal or to file a separate appeal as against the said order. In other words, the remedies, open to the petitioner under the provisions of the SARFAESI Act, are not lost to him since that stage has not even come.

16.Therefore, leaving it open to the petitioner to challenge any possession notice, as and when issued by the first respondent under section 13[4] in pursuance of the impugned notice, either in the same appeal pending on the file of the Debts Recovery Tribunal or by way of a separate appeal, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed,

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Authorised Officer,
Indian Bank, TKM Complex, Katpadi Road,
Vellore 632 004.

2.The Branch Manager,
Indian Banck, Vellore Main Road,
Katpadi Road, Vellore 632 004.

1 cc To M/s.Sai, Bharath & Ilan, Advocate, SR.72009.
1 cc To M/S.Aiyar & Dolia, Advocate, SR.72047.

W.P.No.2431/2007

NTK(CO)
RVL 19.12.2007

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